

# Re Fabi

IN THE MATTER OF:

UNIVERSAL MARKET INTEGRITY RULES

AND

MARTIN FABİ

2008 IIROC 16

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Ontario District)

Heard: October 16, 2008 in Toronto ON  
Decision: October 29, 2008  
(9 paras.)

## Hearing Panel:

Paul M. Moore, Q.C., Chair  
Donald (Sandy) Grant  
Duncan Webb

## Appearances:

Charles Corlett, IIROC Enforcement Counsel  
David A. Hausman & Brad Moore, Respondent's Counsel

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## REASONS FOR APPROVAL OF SETTLEMENT AGREEMENT

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These are the reasons delivered orally by Paul M. Moore, Q.C., chair of the panel, on October 16, 2008 at the end of the hearing. This version is based on the transcript of the hearing which has been modified and approved by the chair of the panel for publication to provide a public record of the reasons. Reference may be made to the settlement agreement, published in the IIROC bulletin, for a description of the facts and agreed sanctions presented to the panel.

1. The settlement agreement is within the parameters of acceptability as far as the sanctions are concerned; therefore, we approve the settlement agreement as being in the public interest.
2. While it may appear, at first blush, that the sanctions are at the light end of acceptability, they still are within the parameters of acceptability. They are appropriate considering the factors that were mentioned by counsel, and are evident in the documentation.
3. Mr. Fabi didn't normally trade equities; and, yet, he was dealing at the year end in an isolated situation with equity securities.
4. We accept, from what appears in the record, that his misbehaviour arose through inadvertence and negligence, which are not excusable, rather than deliberate manipulation or participation in manipulation.

5. If there had been any kind of deliberateness in his conduct, we would have taken a different view of the appropriateness of the sanctions.
6. Mr. Fabi did not personally benefit directly in the trading.
7. MF Global, Mr. Fabi's employer, identified and dealt with this misadventure quickly. Their surveillance system works.
8. Mr. Fabi cooperated with MF Global.
9. MF Global meted out what it viewed as appropriate sanctions. We found this helpful. We do not believe it necessary to second-guess what MF Global believed appropriate in this case: a three month suspension without pay.

The foregoing version of the reasons is hereby approved, at Toronto this 29<sup>th</sup> day of October, 2008.

Paul M. Moore, Q.C., Chair of the Panel  
Donald Sandy Grant  
Duncan Webb

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## **OFFER OF SETTLEMENT**

### **A. INTRODUCTION**

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (“the Investigation”) into the conduct of Martin Fabi (“the Respondent”).
2. The Investigation was commenced by the Investigations and Enforcement Department Staff of Market Regulation Services Inc. (“RS”) prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between RS and IIROC, effective June 1, 2008, RS has retained IIROC to provide services for RS to carry out its regulatory functions.
3. The Investigation has disclosed matters for which IIROC seeks certain sanctions against the Respondent pursuant to Rule 10.5 of the Universal Market Integrity Rules (“UMIR”).
4. If this Offer of Settlement is accepted by the Respondent, the resulting settlement agreement (the “Settlement Agreement”), which has been negotiated in accordance with Part 3 of UMIR Policy 10.8, is conditional upon the approval by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1 (“the Hearing Panel”).
5. The Respondent agrees to waive all rights under UMIR to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.
6. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.
7. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

### **B. AGREEMENT AS TO REQUIREMENTS CONTRAVENED**

8. The Respondent agrees that on December 31, 2007 he entered orders and executed trades on the TSX Venture Exchange that he ought reasonably to have known, would create or could reasonably be expected to create, an artificial sale price for six securities contrary to UMIR 2.2(2)(b) and Policy 2.2, for which he is liable under UMIR 10.4(1).

**C. ADMITTED FACTS**

9. Staff and the Respondent agree with and rely upon the admitted facts and conclusions which are set out in the Statement of Allegations attached as Appendix "A" to this Settlement Agreement.

**D. DISPOSITION**

10. For the contraventions in paragraph 8 above, Staff and the Respondent have agreed upon disposition as follows:
- (i) a fine of \$15,000.00 payable by the Respondent to IIROC; and
  - (ii) costs of \$5,000.00 payable by the Respondent to IIROC.
11. If this Settlement Agreement is accepted by a Hearing Panel, the Respondent agrees to pay the amounts referred to in paragraph 10 within 30 days of such acceptance.

**E. PROCEDURES FOR ACCEPTANCE OF OFFER OF SETTLEMENT AND APPROVAL OF SETTLEMENT AGREEMENT**

12. The Respondent shall have until the close of business on Friday, October 3, 2008 to accept the Offer of Settlement and serve an executed copy thereof on Staff.
13. This Settlement Agreement shall be presented to a Hearing Panel at a public hearing (the "Approval Hearing") held for the purpose of approving the Settlement Agreement, in accordance with the procedures described in UMIR Policy 10.8 in addition to any other procedures as may be agreed upon between the parties. The Respondent acknowledges that IIROC shall notify the public and media of the Approval Hearing in such manner and by such media as IIROC sees fit.
14. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may accept or reject this Settlement Agreement.
15. In the event the Settlement Agreement is accepted by a Hearing Panel, the matter becomes final, there can be no appeal or review of the matter, the disposition of the matter agreed upon in this Settlement Agreement will be included in the permanent record of IIROC in respect of the Respondent and IIROC will publish a summary of the Requirements contravened, the facts, and the disposition agreed upon in the Settlement Agreement.
16. In the event the Hearing Panel rejects the Settlement Agreement, IIROC may proceed with a hearing of the matter before a differently constituted Hearing Panel pursuant to Part 3.7 of UMIR Policy 10.8 and this Settlement Agreement may not be referred to without the consent of both parties.
17. The Respondent agrees that, in the event he fails to comply with any of the terms of the Settlement Agreement, IIROC may enforce this settlement in any manner it deems appropriate and may, without limiting the generality of the foregoing, suspend the Respondent's access to marketplaces regulated by IIROC until IIROC determines that the Respondent is in full compliance with all terms of the Settlement Agreement.
18. The Respondent agrees that neither he, nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

IN WITNESS WHEREOF the parties have signed this Settlement Agreement as of the dates noted below.  
DATED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Martin Fabi

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness

DATED at Toronto, Ontario on the 26<sup>th</sup> day of September, 2008.

Per: \_\_\_\_\_  
ALEKSANDAR POPOVIC  
VICE-PRESIDENT, ENFORCEMENT  
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA  
Suite 1600, 121 King Street West  
Toronto, Ontario M5H 3T9

This foregoing Settlement Agreement is hereby approved this \_\_\_\_\_ day of October, 2008, by the following hearing panel constituted to review the terms thereof:

Per: \_\_\_\_\_  
Panel Chair

Per: \_\_\_\_\_  
Panel Member

Per: \_\_\_\_\_  
Panel Member

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